

**Letter of Findings: 01-20160046  
Income Tax  
For the Year 2011**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### **HOLDING**

Individual established that he had no Indiana domicile during 2011. Therefore, the Department's assessments for 2011 Indiana income tax were proven incorrect. Penalty was also abated.

### **ISSUES**

#### **I. Income Tax–Residency.**

**Authority:** IC § 6-3-1-12; IC § 6-8.1-5-1; State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-22](#); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of Indiana individual income tax.

#### **II. Tax Administration–Penalty.**

**Authority:** IC § 6-8.1-10-3.

Taxpayer protests the imposition of a penalty.

### **STATEMENT OF FACTS**

Taxpayer is an individual. The Indiana Department of Revenue ("Department") determined that Taxpayer was domiciled in Indiana for the tax year 2011 but that Taxpayer neither filed a 2011 Indiana individual income tax return nor paid any 2011 Indiana individual income tax. Taxpayer protested the Department's determination of domicile and the imposition of income tax plus penalty. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

#### **I. Income Tax - Residency.**

### **DISCUSSION**

Taxpayer protests the imposition of Indiana adjusted gross income tax for the tax year 2011. The Department determined that Taxpayer was an Indiana domiciliary for all of 2011 because he had an Indiana driver's license and had a W-2 form both of which listed the same Indiana address. Taxpayer argues that he was domiciled in another country in 2011 and had not been a resident of Indiana since leaving the United States in 2003. Therefore, Taxpayer argues, he did not need to file a 2011 Indiana income tax return nor did he owe any Indiana income tax for that year.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a

statute that an agency is 'charged with enforcing. . .[courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Pursuant to IC § 6-3-1-12, a resident is defined as follows:

The term "resident" includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state.

In other words, a resident includes individuals who are domiciled in Indiana and/or maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana. In this case, Taxpayer was able to establish that he did not spend more than 183 days in Indiana during 2011. Therefore, in order to be considered a resident of Indiana during 2011, Taxpayer must have been domiciled here.

Domicile is defined by [45 IAC 3.1-1-22](#), which states:

"Domicile" Defined. For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
  - (2) Registering to vote
  - (3) Seeking elective office
  - (4) Filing a resident state income tax return or complying with the homestead laws of a state
  - (5) Receiving public assistance
  - (6) Titling and registering a motor vehicle
  - (7) Preparing a new last will and testament which includes the state of domicile.
- (Emphasis added).

Thus, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have intent to remain at that non-Indiana address.

The Indiana Supreme Court considered the issue of the meaning of "domicile" in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), in which the court provided:

Domicile means "the place where a person has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning." *Turner*, 241 Ind. at 80, 168 N.E.2d at 196. Domicile can be established in one of three ways: "domicile of origin or birth, domicile by choice, and domicile by operation of law." *Croop*, 199 Ind. at 271, 157 N.E. at 278. **The domicile of an unemancipated minor is determined by the domicile of his parents.** *Hiestand v. Kuns* (1847), 8 Blackf. 345.

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and ... he does not lose the one until he has gained one in another place." *Scott*, 171 Ind. at 361, 86 N.E. at 413. **Establishing a new residence or domicile terminates the former domicile.** A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... **[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order**

**to accomplish a change of domicile."** Rogers, 226 Ind. at 35-36, 77 N.E.2d at 595-96. Id. at 1317. (**Emphasis added**).

Therefore, an examination of Taxpayer's acts is required to determine if Taxpayer had the intention to acquire a new domicile outside Indiana and to abandon his domicile in Indiana.

A review of the domiciliary criteria listed under [45 IAC 3.1-1-22](#) is illuminating in this matter. As is common for college students, Taxpayer's indicia of domicile were minimal while attending school. As explained by the court in Bayh, the domicile of an unemancipated minor is determined by the domicile of his parents and it was this childhood domicile which continued for Taxpayer through college. As a student, he did not have the resources to acquire the material and social indicia of what the Bayh court described as "domicile by choice." After graduating from college in 2003, Taxpayer left Indiana to work in another country and has not been in the United States for more than two to three weeks in any given year in the intervening one and a half decades. Taxpayer filed Federal form 2555, titled "Foreign Earned Income" for 2011. Taxpayer never owned any real property in Indiana. Taxpayer did rent an apartment in the foreign country. Taxpayer established that the address listed on the 2555 for 2011 was actually his mother's Indiana address (in which he held no interest) and that he listed that address due to the unreliable nature of the mail system in the country where he was residing. Thus, Taxpayer's mother's Indiana address served the same function as a P.O. Box. Taxpayer renewed his Indiana driver's license in Indiana in 2009, but also held driver's licenses in two other countries in 2011, which is the year at issue in this protest.

After review of these factors, the Department concludes that Taxpayer did take steps to establish a new domicile. As provided by the Indiana Supreme Court in Bayh, there must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish the change of domicile which is necessary to lose one's domicile in Indiana. Here, Taxpayer did intend to abandon the Indiana domicile of his childhood by taking all the steps of establishing himself in his new residence/domicile as allowed by the other nation's laws. As provided by [45 IAC 3.1-1-22](#), the minimal factors tethering Taxpayer to Indiana were outweighed by the factors showing his intent to establish a new domicile. Since Taxpayer was no longer domiciled in Indiana and since he spent less than 183 days in Indiana in 2011, he no longer qualified as an Indiana resident under IC § 6-3-1-12. Therefore, while it was reasonable for the Department to believe that a person who listed an Indiana address on an Indiana driver's license and who listed an Indiana address on a federal tax form was an Indiana domiciliary, Taxpayer has met the burden imposed by IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

## FINDING

Taxpayer's protest is sustained.

## II. Tax Administration - Penalty.

## DISCUSSION

Taxpayer protests the imposition of penalties pursuant to IC § 6-8.1-10-3, which provides:

- (a) If a person fails to file a return on or before the due date, the department shall send him a notice, by United States mail, stating that he has thirty (30) days from the date the notice is mailed to file the return. If the person does not file the return within the thirty (30) day period, the department may prepare a return for him, based on the best information available to the department. The department prepared return is prima facie correct.
- (b) If the department prepares a person's return under this section, the person is subject to a penalty of twenty percent (20[percent]) of the unpaid tax. In the absence of fraud, the penalty imposed under this section is in place of and not in addition to the penalties imposed under any other section.

In this case, Taxpayer did not file a return for his 2011 Indiana income tax. However, as explained above in Issue I, Taxpayer was no longer domiciled in or a resident of Indiana and was not required to file an Indiana individual income tax return. Taxpayer has been sustained in whole on the imposition of Indiana income tax for 2011, therefore the imposition of penalty is moot.

## FINDING

Taxpayer's protest of the imposition of penalty is sustained.

**SUMMARY**

Taxpayer's Issue I protest regarding the imposition of adjusted gross income tax is sustained. Taxpayer's Issue II protest regarding the imposition of penalty is sustained.

*Posted: 08/31/2016 by Legislative Services Agency*

An [html](#) version of this document.